

FINDINGS AND ORDER OF THE REGIONAL PLANNING COMMISSION COUNTY OF LOS ANGELES

**PROJECT NUMBER R2008-00138-(5)
CONDITIONAL USE PERMIT NO. 200800014-(5)**

REQUEST:

The applicant is requesting a Conditional Use Permit to authorize the sale of alcoholic beverages (beer and wine) for on-site consumption in conjunction with a proposed new restaurant to be located in an existing commercial building located in the C-3 (Unlimited Commercial) and A-1-1 (Light Agriculture, Minimum 1 Acre Lot Size) Zones.

REGIONAL PLANNING COMMISSION HEARING DATES: February 4, 2009, March 4, 2009.

PROCEEDINGS BEFORE THE REGIONAL PLANNING COMMISSION:

February 4, 2009

A duly noticed public hearing was held on February 4, 2009. Commissioners Bellamy, Helsley and Modugno were present. Commissioner Valadez was present during the first part of the hearing. Commissioner Rew was absent. The applicant, Mr. James Morales was sworn in and testified in favor of the project and answered questions posed by the Commission. Several individuals testified in favor of the application and a representative of the Antelope Acres Community Center testified in opposition to the application. Public hearing was continued to March 4, 2009 to allow the applicant time to meet with Antelope Acres Town Council and the community to address issues and concerns raised and to provide a clear project description.

March 4, 2009

A duly noticed public hearing was held on March 4, 2009. Commissioners Bellamy, Helsley, Modugno and Valadez were present. Commissioner Rew was absent. The applicant, Mr. James Morales, was sworn in and testified in favor of the project and answered questions posed by the Commission. A representative of the Antelope Acres Town Council and several members of the community testified for and against the application. The Commission subsequently closed the public hearing and after discussion voted 4-0 to deny the application.

FINDINGS:

1. The applicant is requesting a Conditional Use Permit to authorize the sale of alcoholic beverages (beer and wine) for on-site consumption in conjunction with a proposed new restaurant to be located in an existing commercial building located in the C-3 (Unlimited Commercial) and A-1-1 (Light Agriculture, Minimum 1 Acre Lot Size) Zones.

2. The subject property is located at 47904 90th Street West in the Antelope Valley West Zoned District.
3. The 2.3-acre subject property is flat and rectangular in shape. The property is currently developed with an existing one-story commercial building proposed for restaurant use, and 23 parking spaces. A single family residence is located at the rear of the property along with accessory structures.
4. The subject property is zoned C-3 (Unlimited Commercial) and A-1-1 (Light Agricultural, Minimum 1 Acre Lot Size). The commercial building and parking lot is located on the portion of the parcel zoned C-3.
5. Surrounding properties are zoned as follows:

North: C-3 (Unlimited Commercial)
South: R-3 (Limited Multiple Residence)
West: C-3 (Unlimited Commercial)
East: A-1-1 (Light Agricultural, Minimum 1 Acre Lot Size)
6. Land uses within 500 feet of the subject property consist of the following:
North: markets, utility company substation, single family residential and vacant
South: vacant and single family residential
West: single family residential and vacant
East: community center, vacant, single family residential
7. The land use radius map submitted by the applicant indicates that there are two locations that sell alcohol within a 600' radius of the subject property. The two locations sell a full line of alcoholic beverages for off-site consumption. There is no other establishment within a 600' foot radius for on-site consumption.
8. The applicant's site plan depicts the existing one-story commercial building measuring 1,630 square feet that the applicant proposes to use as a new restaurant and bar; the plan also shows 23 parking spaces provided in a parking lot measuring approximately 9,800 square feet. The rear portion of the lot contains an existing single-family residence measuring 1,400 square feet.
9. The applicant has proposed to serve alcohol with a Type 41 alcohol license which requires that beer and wine be served in conjunction with a bona fide restaurant.
10. The California Business and Professions Code Section 23958.4 Worksheet issued by the California Department of Alcoholic Beverage Control on August 25, 2008 states that an "undue concentration" of alcohol licenses exists in Census Tract 9009. The census tract allows for 2 "on sale" licenses and there currently

exist 3 "on sale" licenses. The census tract allows for 2 "off sale" licenses and there currently exist 2 "off sale" licenses.

11. Two existing off-sale licenses are located in Antelope Acres and are within 600 feet of the subject property. The Village Market is located at 47955 90th Street West and Antelope Acres Market at 48011 90th Street West.
12. The Antelope Acres Community Center is a sensitive use within 600 feet of the subject property along the eastern edge of the subject property. The Community Center property is used by children for 4-H activities and also provides facilities for athletic activities.
13. On December 23, 2008, public hearing notices were mailed out to property owners within 1000 feet of the subject property; the Department of Alcoholic Beverage Control was also notified of the hearing. Advertisements were submitted for publication to the Antelope Valley Press on the same dates. Case-related material, including the hearing notice, factual and burden of proof were sent on the same date to the Lancaster Public Library.
14. According to the applicant, the hearing notice was posted on the property on December 31, 2008, or 35 days prior to the first public hearing. The applicant removed the sign in the morning of February 2, 2009 and reposted the sign in the morning of February 3, 2009 and the sign was not posted on the property for approximately 24 hours. Because the public hearing was continued for an additional month and the hearing notice continued to be posted, the 24 hour lapse in posting of the property is unlikely to have resulted in prejudice to any parties.
15. The Commission conducted two public hearings on February 4, 2009 and March 4, 2009. The public hearing was continued to allow the Antelope Acres Town Council additional time to consider information from the applicant.
16. Seven persons in total testified in opposition to the application on the two hearing dates. One person testified in opposition on February 4, 2009 and six persons testified in opposition on March 4, 2009.
17. Six persons in total, including the applicant, testified in favor of the application on the two hearing dates. Six persons testified in support on February 4, 2009. Four persons testified in support on March 4, 2009, of which all four also testified on February 4, 2009.
18. The Commission received seven letters in support and sixteen letters in opposition to this application, including letters of opposition from the Antelope Acres Town Council and the Antelope Acres Community Center.

19. The Commission received a petition supporting the “opening the Cactus Inn Bar & Grill” with approximately 135 signatures and a petition with 23 signatures “in support of the Cactus Inn.” Of the total signatures 85 names were highlighted to indicate that they were residents of Antelope Acres.
20. The Commission received a petition phrased “Petition to NOT grant the Cactus Inn Bar & Grill CUP 200800014-5 allowing operation or service of beer and wine without the attached conditions” with 9 signatures. The individual providing the petition stated that an additional 40 signatures were collected at a local Neighborhood Watch meeting which took place several days before the second public hearing, but that the petition had been lost or stolen.
21. The applicant presented information to the Antelope Acres Town Council on January 21, 2009 and February 18, 2009.
22. On February 18, 2009, the board of directors of the Antelope Acres Town voted 5-0 to oppose the application and to express its support for an appropriate “family-friendly” restaurant in the community. A letter was submitted by the Town Council stating that proposed use would “threaten our rural way of life and present numerous safety concerns”, create an “undesirable atmosphere in the middle of our community” and stating that they were “unable to get what we feel are straightforward and informative answers to several key concerns.”
23. Publications submitted to the Commission include customer reviews and event listings associated with the Cactus Inn that indicate that the applicant had operated a bar at the former location. The applicant has stated that he intends to operate the same type of establishment at the new location.
24. The applicant provided a proposed food menu “Cactus Inn’s Afternoon & Evening Menu” with limited entree options that is more characteristic of bar-type establishment than a restaurant, and which indicates the applicant’s intention to operate the establishment primarily as a bar.
25. The applicant provided a proposed drink menu entitled “Cactus Inn’s Beer & Wine Well” that listed draft beer in 32-oz containers, which would indicate the applicant’s intention to operate the establishment primarily as a bar.
26. The site plan submitted by the applicant indicates a 35-foot bar with 16 bar stools and 10 tables with a total seating capacity of 46 seats, with 35% of the seating capacity at the bar. Of the 10 tables, 6 are raised circular tables with a proposed 4 person seating capacity that would be more characteristic of a bar establishment.
27. The applicant stated to the Commission on February 4, 2009 and March 4, 2009 that he did not agree with conditions staff had drafted that were intended to

create a restaurant rather than bar environment. Such conditions included prohibitions on a billiard table, gaming machines, and live entertainment.

28. There are concerns about the applicant abiding by conditions of the permit based on the existing zoning enforcement action on the subject property. The applicant was informed of three violations of the zoning code on the subject property two weeks prior to the second public hearing. In that time the applicant had not corrected the zoning violations, and a formal Notice of Violation was issued by zoning enforcement staff on March 4, 2009.
29. The County of Los Angeles Sheriff's Department provided crime-related information in a letter dated December 16, 2008 regarding the former establishments located on the subject property. The Sheriff's Department recommended that in the event the application was approved that certain conditions of approval be adopted to help ensure that the applicant would operate the business as a bona fide restaurant.
30. The proposed use may increase the incidence of crimes and vandalism in the surrounding community. A Sheriff's Deputy testified on February 4, 2009 and provided an interpretation of the 19 calls for service between 12/17/02 and 12/17/07 to the general location of the former Cactus Inn at 5022 Fort Tejon Road in Palmdale.
31. Antelope Acres is served by the Lancaster Station of the County of Los Angeles Sheriff which is located approximately 12 miles to the East. The proposed use may require service calls and the extended response time affects the safety of patrons and the surrounding community.
32. A restaurant without the sale of alcohol is a permitted use in the C-3 (Unlimited Commercial) Zone pursuant to Los Angeles County Code Section 22.28.180(A)(2).
33. The applicant may establish a bona fide restaurant without the sale of alcohol in this community and demonstrate his ability to operate such a facility.
34. The applicant is eligible to reapply for a conditional use permit to sell beer and wine after one year of final action on this case, pursuant to Los Angeles County Code Section 22.56.020.
35. The Commission finds that the proposed use is inconsistent with the County of Los Angeles General Plan because the applicant has not established that he will be providing *locally* oriented commercial services. The Antelope Valley Areawide General Plan provides guidance for further development of Antelope Acres. The Plan states that "areas adjacent to the Ave E-8/90th Street West intersection are designated as 'Commercial' to recognize the existing uses and to provide for moderate expansion of the *locally* oriented commercial services" (Page IV-3).

The applicant has stated his intention to promote the business to an out of area clientele. The applicant provided a petition in support of his application with a list of names, of which at least 40% were non-local residents.

36. The Commission finds that the proposed use is inconsistent with the rural lifestyle of the community described by the County of Los Angeles General Plan. The Antelope Valley Areawide General Plan states that Antelope Acres is a rural residential community consisting of "a series of larger parcels which are either homesites or ranchsites" and it further states that "the Plan recognizes this lifestyle." (Page IV-3) The proposed use would be located along 90th Street West, which serves as the main thoroughfare through this community and has a concentration of residences, an elementary school, and a church. The residences and other uses along 90th Street West would be negatively impacted by noise associated with the proposed use.
37. The Commission finds that the proposed restaurant with the sale of beer and wine would not serve as a convenience and necessity within this community as there are two existing establishments within Antelope Acres.
38. The Commission finds that the applicant has not demonstrated that adequate support exists in the community for this application.
39. The Commission finds that it will not be possible to place appropriate restrictions on the operation of the proposed use to ensure that it will be compatible with surrounding land uses.

BASED ON THE FOREGOING, THE REGIONAL PLANNING COMMISSION CONCLUDES:

Pursuant to Los Angeles County Code Section 22.56.040 the applicant has **NOT** met the burden of proof requirements for an application for a conditional use because he has not substantiated to the satisfaction of the Regional Planning Commission:

1. That it will not adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area; and
2. That it will not be materially detrimental to the use, enjoyment or valuation of property of other persons located in the vicinity of the site; and
3. That it will not jeopardize, endanger or otherwise constitute a menace to the public health, safety or general welfare.

Pursuant to Los Angeles County Code Section 22.56.195 the applicant has **NOT** met the burden of proof requirements for alcoholic beverage sales because he has not substantiated to the satisfaction of the Regional Planning Commission that:

1. The requested use at the proposed location will not adversely affect the use of a place used exclusively for religious worship, school, park, playground or any similar use within a 600-foot radius; and
2. The requested use at the proposed location is sufficiently buffered in relation to any residential area within the immediate vicinity so as not to adversely affect said area; and
3. The requested use at the proposed location will not result in an undue concentration of similar premises; a separation of not less than 500 feet shall not be construed as undue concentration; provided, however, that the planning agency may find that the public convenience or necessity for an additional facility selling alcoholic beverages for off-site consumption, outweighs the fact that it is located within a 500-foot radius of any other facility selling alcoholic beverages for either on-site or off-site consumption, in which case the shelf space devoted to alcoholic beverages shall be limited to not more than five percent of the total shelf space in the establishment; and
4. The requested use at the proposed location will not adversely affect the economic welfare of the nearby community

REGIONAL PLANNING COMMISSION ACTION:

In view of the findings of fact and conclusions presented above, Conditional Use Permit 200800014-(5) is **DENIED**.

c: Each Commissioner, Zoning Enforcement

VOTE: 4-0

Concurring: Bellamy, Valadez, Modugno, Helsley

Dissenting: None

Abstaining: None

Absent: Rew

Action Date: March 4, 2009

MM:AS
March 4, 2009